

Title	<b>Trial Setting and Civil Case Management (amend Cal. Rules of Court, rule 212)</b>
Summary	Rule 212 concerns civil case management conferences and review. Under this rule, setting the case for trial is one of the issues that the court must consider at the time of the case management conference or review. The current rule does not contain express criteria for setting the trial date. This proposal would amend the rule to include such criteria and make several other changes.
Source	Staff of the Administrative Office of the Courts and the Blue Ribbon Panel of Experts on the Fair and Efficient Administration of Civil Cases
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Discussion	<p><u>Background</u></p> <p>In February 2003, Chief Justice Ronald M. George appointed the Blue Ribbon Panel of Experts on the Fair and Efficient Administration of Civil Cases, a distinguished group of experts in the fields of civil procedure and practice and court administration. The panelists include leaders in the judicial branch and prominent attorneys whose member organizations represent a broad range of plaintiffs and defendants involved in civil litigation in California.</p> <p>The Blue Ribbon Panel convened in April–June 2003. It developed three sets of proposals intended to improve the administration of civil cases and to promote a more flexible application of the rules relating to trial setting, continuances, and case management. The proposal presented in this invitation to comment is one of the panel's three proposals. It concerns the criteria for setting a date for trial.<sup>1</sup></p>

<sup>1</sup> The other two proposals relate to the rules and standards concerning (1) motions for continuances of trial dates and (2) differential case management and the time standards for disposition of civil cases. These proposals are contained in two invitations to comment. The three proposals are related in that all are intended to improve the administration of civil cases, but they are presented separately so that commentators may more easily address the rules and standards in each subject area.

### Setting the Trial Date

The main feature of this proposal is a new provision, subdivision (j), that sets forth the facts and circumstances that the court is to consider in setting a civil case for trial. The court must consider “all the facts and circumstances that are relevant.” The amended rule specifies 25 facts and circumstances that may be included among criteria to be considered by the court.

These considerations would apply to trial setting not only at an initial case management conference, but also at any other proceeding at which the case is set for trial.

### Other Changes

This proposal, in addition to including express criteria for setting a trial date in rule 212, would make several other amendments to the rule. For instance, in subdivision (b), on case management conferences, the following language would be added to paragraph (1):

At the initial conference, the court must review the case comprehensively and decide whether to assign the case to an alternative dispute resolution process, whether to set the case for trial, and the other matters stated in this rule. The initial case management conference should be the first event conducted by court order in each case, except for orders to show cause.

In subdivision (b)(4), a sentence would be added: “Whenever it is fair and practical, the court should consider waiving the requirement of an appearance.” And in subdivision (c)(2), on additional case management conferences, the following would be added:

*(No unnecessary conferences)* Parties must not be required to appear at conference unnecessarily. In most cases, one case management conference and one pretrial conference will be sufficient. But in complicated or difficult cases, the court may order additional case management conferences if that would promote the fair and efficient resolution of the cases. In determining whether to hold conferences, the court must consider each case individually on its own merits.

Some members of the Judicial Council’s Rules and Projects Committee, which reviewed this proposal, objected to the new

provisions in subdivisions (b)(4)(recommending that courts consider waiving appearances) and (c)(2) (stating that appearances at conferences must not be required “unnecessarily”). They believed that these proposed provisions are unnecessary and would unduly limit the discretion of the trial courts to hold case management conferences and to require parties to appear. Because the courts’ ability to have conferences may be very helpful in managing and resolving cases, imposing limitations on the courts in this respect may be undesirable. Judges, attorneys, and others concerned about these issues are invited to provide specific comments on whether these proposed new provisions should be adopted.

Subdivision (e)(10) would be amended to clarify that the subjects to be considered at the case management conference should include whether a hearing should be set for a motion to bifurcate under section 598 of the Code of Civil Procedure.

Finally, subdivision (f) would be amended to indicate that the issues about which the parties must meet and confer before the conference include identification of the dates on which all parties and their attorneys are available for trial.

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Attachment

## PROPOSAL

Rule 212 of the California Rules of Court would be amended, effective January 1, 2004, to read:

**Rule 212. Case management conference; meet-and-confer requirement; and case management order**

(a) **[Initial case management review]** In every general civil case except complex cases and cases exempted under rules 207(c)–(d), 209(d)–(e), ~~and 214,~~ and 243.8, the court must review the case no later than 180 days after the filing of the initial complaint.

(b) **[Case management conference]**

(1) *(Case management conference)* In each case, the court must set a case management conference to review the case. At the initial conference, the court must review the case comprehensively and decide whether to assign the case to an alternative dispute resolution process, whether to set the case for trial, and the other matters stated in this rule. The initial case management conference should be the first event conducted by court order in each case, except for orders to show cause.

(2) *(Notice of the conference)* Notice of the date of the case management conference must be given to all parties no later than 45 days before the conference, unless otherwise ordered by the court. The court may provide by local rule for the time and manner of giving notice to the parties.

(3) *(Appearances at the conference)* At the conference, counsel for each party and each self-represented party must appear personally or, if permitted under rule 298(c)(2), by telephone; must be familiar with the case; and must be prepared to discuss and commit to the party's position on the issues listed in (e)– ~~and~~ (f).

~~(2)(4)~~ *(Case management order without appearance)* If, based on its review of the written submissions of the parties and such other information as is available, the court determines that appearances at the conference are not necessary, the court may issue a case management order and notify the parties that no appearance is required. Whenever it is fair and practical, the court should consider waiving the requirement of an appearance.

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2 ~~(3)~~(5) *(Option to excuse attendance at conferences in limited civil cases-)*  
3 In all general civil cases except those exempted under (a), the court  
4 must review the case and issue a case management order under this  
5 rule, but by local rule the court may provide that counsel and self-  
6 represented parties are not to attend a case management conference  
7 in limited civil cases; unless ordered to do so by the court.  
8

9 (c) ~~[Special order or request for a case management conference]~~  
10 **Additional case management conferences**  
11

12 (1) *(Special order or request for a case management conference)* The  
13 court on its own motion may order, or a party or parties may  
14 request, that a case management conference be held at any time.  
15

16 (2) *(No unnecessary conferences)* Parties must not be required to  
17 appear at conferences unnecessarily. In most cases, one case  
18 management conference and one pretrial conference will be  
19 sufficient. But in a complicated or difficult cases, the court may  
20 order additional case management conferences if that would  
21 promote the fair and efficient resolution of the cases. In  
22 determining whether to hold conferences, the court must consider  
23 each case individually on its own merits.  
24

25 (d) **[Arbitration determination]** In courts having a judicial arbitration  
26 program under Code of Civil Procedure section 1141.11, the court at the  
27 time of the case management conference or review must determine if  
28 the case is suitable for judicial arbitration.  
29

30 (e) **[Subjects to be considered at the case management conference]** In  
31 any case management conference or review under this rule, the parties  
32 must address, if applicable, and the court may take appropriate action  
33 with respect to, the following:  
34

35 (1) Whether there are any related cases;  
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37 (2) Whether all parties named in the complaint or cross-complaint  
38 have been served, have appeared, or have been dismissed;  
39

40 (3) Whether any additional parties may be added or the pleadings may  
41 be amended;  
42

- (4) Whether, if the case is a limited civil case, the economic litigation procedures under Code of Civil Procedure section 90 et seq. will apply to it or the party intends to bring a motion to exempt the case from these procedures;
- (5) Whether any other matters (e.g., the bankruptcy of a party) may affect the court's jurisdiction or processing of the case;
- (6) Whether the parties have stipulated to, or the case should be referred to, judicial arbitration or any other form of Alternative Dispute Resolution (ADR) and, if so, the date by which the ADR must be completed;
- (7) Whether an early settlement conference should be scheduled and, if so, on what date;
- (8) Whether discovery has been completed and, if not, the date by which it will be completed;
- (9) What discovery issues are anticipated;
- (10) Whether the case should be bifurcated or a hearing should be set for a motion to bifurcate under section 598 of the Code of Civil Procedure;
- (11) Whether there are any cross-complaints that are not ready to be set for trial and, if so, whether they should be severed;
- (12) Whether the case is entitled to any statutory preference and, if so, the statute granting the preference;
- (13) Whether a jury trial is demanded, and, if so, the identity of each party requesting a jury trial;
- (14) If the trial date has not been previously set, the date by which the case will be ready for trial and the available trial dates;
- (15) The estimated length of trial;
- (16) The nature of the injuries;
- (17) The amount of damages, including any special or punitive damages;

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2 (18) Any additional relief sought;

3  
4 (19) Whether there are any insurance coverage issues that may affect  
5 the resolution of the case; and

6  
7 (20) Any other matters that should be considered by the court or  
8 addressed in its case management order.  
9

10 (f) **[Meet-and-confer requirement]** Unless the court orders another time  
11 period, no later than 30 calendar days before the date set for the case  
12 management conference, the parties must meet and confer, in person or  
13 by telephone, to consider each of the issues identified in (e) and, in  
14 addition, to consider the following:

15  
16 (1) Resolving any discovery disputes and setting a discovery schedule;

17  
18 (2) Identifying and, if possible, informally resolving any anticipated  
19 motions;

20  
21 (3) Identifying the facts and issues in the case that are uncontested and  
22 may be the subject of stipulation;

23  
24 (4) Identifying the facts and issues in the case that are in dispute;

25  
26 (5) Determining whether the issues in the case can be narrowed by  
27 eliminating any claims or defenses by means of a motion or  
28 otherwise;

29  
30 (6) Possible settlement; and

31  
32 (7) Identifying the dates on which all parties and their attorneys are  
33 available for trial; and

34  
35 ~~(7)~~(8) Other relevant matters.  
36

37 (g) **[Case management statement]**  
38

39 (1) (*Timing of statement*) No later than 15 calendar days before the  
40 date set for the case management conference or review, each party  
41 must file a case management statement and serve it on all other  
42 parties in the case.  
43

1 (2) (*Contents of statement*) Parties must use the mandatory *Case*  
2 *Management Statement* (form CM-110). All applicable items on  
3 the form must be completed. In lieu of each party's filing a  
4 separate case management statement, any two or more parties may  
5 file a joint statement under this rule.  
6

7 (h) **[Stipulation to Alternative Dispute Resolution]** If all parties agree to  
8 use an Alternative Dispute Resolution (ADR) process, they must jointly  
9 complete the ADR stipulation form provided for under rule 201.9 and  
10 file it with the court.  
11

12 (i) **[Case management order]** The case management conference must be  
13 conducted in the manner provided by local rule. The court must enter a  
14 case management order setting a schedule for subsequent proceedings  
15 and otherwise providing for the management of the case. The order  
16 should include such provisions as may be appropriate, including:  
17

18 (1) Referral of the case to judicial arbitration or some other form of  
19 Alternative Dispute Resolution;  
20

21 (2) A date for completion of the arbitration process or other form of  
22 Alternative Dispute Resolution process if the case has been  
23 referred to such a process;  
24

25 (3) In the event that a trial date has not previously been set, a date  
26 certain for trial if the case is ready to be set for trial;  
27

28 (4) Whether the trial will be a jury trial or a nonjury trial;  
29

30 (5) The identity of each party demanding a jury trial;  
31

32 (6) The estimated length of trial;  
33

34 (7) Whether all parties necessary to the disposition of the case have  
35 been served or have appeared;  
36

37 (8) The dismissal or severance of unserved or not- appearing  
38 defendants from the action;  
39

40 (9) The names and addresses of the attorneys who will try the case;  
41

42 (10) The date, time, and place for a mandatory settlement conference as  
43 provided in rule 222;



- 1 (11) The date, time, and place for the final case management conference  
2 before trial if such a conference is required by the court or the  
3 judge assigned to the case;  
4  
5 (12) The date, time, and place of any further case management  
6 conference or review; and  
7  
8 (13) Any additional orders that may be appropriate, including orders on  
9 matters listed in (e) and (f).  
10

11 **(j) [Setting the trial date]** In setting a case for trial, the court, at the initial  
12 case management conference or at any other proceeding at which the  
13 case is set for trial, must consider all the facts and circumstances that  
14 are relevant. These may include:  
15

- 16 (1) Type and subject matter of the action to be tried;  
17  
18 (2) Whether the case has statutory priority;  
19  
20 (3) Number of causes of action, cross-actions, and affirmative  
21 defenses that will be tried;  
22  
23 (4) Whether any significant amendments to the pleadings have been  
24 made recently or are likely to be made before trial;  
25  
26 (5) Whether the plaintiff intends to bring a motion to amend the  
27 complaint to seek punitive damages under section 425.13 of the  
28 Code of Civil Procedure;  
29  
30 (6) Number of parties with separate interests who will be involved in  
31 the trial;  
32  
33 (7) The complexity of the issues to be tried, including issues of first  
34 impression;  
35  
36 (8) Any difficulties in identifying, locating, or serving parties;  
37  
38 (9) Whether all parties have been served and, if so, the date by which  
39 they were served;  
40  
41 (10) Whether all parties have appeared in the action and, if so, the date  
42 by which they appeared;

- (11) How long the attorneys who will try the case have been involved in the action;
- (12) The trial date or dates proposed by the parties and their attorneys;
- (13) The professional and personal schedules of the parties and their attorneys, including any conflicts with previously assigned trial dates or other significant events;
- (14) The amount of discovery, if any, that remains to be conducted in the case;
- (15) The nature and extent of law and motion proceedings anticipated, including whether any motions for summary judgment will be filed;
- (16) Whether any other actions or proceedings that are pending may affect the case;
- (17) The amount in controversy and the type of remedy sought;
- (18) The nature and extent of the injuries or damages, including whether these are ready for determination;
- (19) The court's trial calendar, including the pendency of other trial dates;
- (20) Whether the trial will be a jury or a nonjury trial;
- (21) The anticipated length of trial;
- (22) The number, availability, and locations of witnesses, including witnesses who reside outside the county, state, or country;
- (23) Whether there have been any previous continuances of the trial or delays in setting the case for trial;
- (24) The achievement of a fair, timely, and efficient disposition of the case; and
- (25) Any other factor that would significantly affect the determination of the appropriate date of trial.

1        ~~⊕~~(k) **[Case management order controls]** The order issued after the case  
2                    management conference or review controls the subsequent course of the  
3                    action or proceeding unless it is modified by a subsequent order.